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EZRA RIPLEY THAYER, for four years Dean of the Harvard Law School, died suddenly on Tuesday, September 14, less than two weeks before the opening of the term. From the tributes in another part of this issue may be gained an appreciation of the incalculable sense of loss which his death has left among the legal profession as a whole, as well as among the friends of the Law School. The loss was felt no less keenly among the students of the School. Indeed it is not easy to express in words the personal sorrow of those whom academic work had brought into intimate contact with him. Among the many treasures which these men will carry away from their course at the Law School there are few that they will prize more highly than the memory of Dean Thayer as a teacher, a legal scholar, and a friend.

THE LAW SCHOOL. — The death of Dean Thayer has necessitated the appointment of an Acting Dean. The choice has fallen on Prof. Austin W. Scott, whose previous experience as a teacher in the School, and as Dean, for one year, of the Law School of Iowa State College, renders him peculiarly fitted to fill the responsible position. A rearrangement of some of the courses of instruction has also been rendered necessary. The course on Evidence will this year be given by Arthur D. Hill, LL.B. '94, and the course on Torts by Chester A. McLain,

LL.B. '15. Both Mr. Hill and Mr. McLain are former editors of the REVIEW. The School also has the long-awaited pleasure, this year, of welcoming back Prof. J. I. Westengard, LL.B. '98, who has been on leave of absence as legal adviser to the King of Siam since 1903. He will give the courses on third-year Property, on Deeds, and on International Law.

COMPULSORY SALES UNDER THE CLAYTON ACT. — It has become a deep-rooted principle of the modern common law that only an exceptional class of business enterprises, grouped under the designation of common employments, are under any affirmative duty to serve the public on demand, without discrimination, and for a reasonable remuneration. There is undoubtedly a strong modern tendency, despite supposed constitutional restrictions, to permit the legislature to add new types of business to this class.[1] Indeed the historical validity of the whole distinction between "public service" companies and ordinary businesses has been disputed,[2] and it has been urged that in the extension of public-service obligations to "private" business lies the solution of modern trade problems.[3]

Whether, aside from the conception of public employment, there is not in the rich field of common-law precedent some other principle from which can be evolved an obligation, under certain circumstances, to serve the public equally, and a correlative right on the part of individuals to require such service, is the question presented in the first case to arise under the Clayton Act. *The Great Atlantic and Pacific Tea Co.* v. *Cream of Wheat Co.*, 224 Fed. 566. The defendant, the manufacturer of "Cream of Wheat," had induced jobbers to maintain prices at such a level that retailers could not profitably sell to the public below fourteen cents a package. The plaintiff, owner of a chain of stores, and a regular customer of the defendant, sold to the public at twelve cents. The manufacturer thereupon refused to sell him any more of the cereal. The plaintiff brought suit in the federal district court, praying that the price-maintenance scheme be declared in contravention of the anti-trust laws, and that the defendant be restrained from "cutting off the said plaintiff's supply" of "Cream of Wheat." Judge Hough refused to grant a preliminary injunction.[4]

Under federal authorities an attempt to fix prices among retailers is an unreasonable restraint of trade under the Sherman Law.[5] Under Section

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[1] German Alliance Ins. Co. *v.* Kansas, 233 U. S. 389; The Pipe Line Cases, 234 U. S. 548. For a discussion of the tendency which these cases illustrate, see 28 HARV. L. REV. 84.

[2] Adler, "Business Jurisprudence," 28 HARV. L. REV. 135.

[3] *Ibid.*, at pp. 160 *ff.*

[4] An appeal is pending in the Circuit Court of Appeals.

[5] That price-fixing is unreasonable restraint of trade has been decided by the federal courts in numerous decisions holding contracts unenforceable. Dr. Miles Medical Co. *v.* Park & Sons Co., 220 U. S. 373; Bauer & Cie *v.* O'Donnell, 229 U. S. 1; John D. Park & Sons Co. *v.* Hartman, 153 Fed. 24. A recent decree enjoining such practice at the suit of the United States is based on that principle. United States *v.* Kellogg Toasted Corn Flake Co., 222 Fed. 725 (decree filed Sept. 20, 1915). The California